

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

JOHN J. EVANS, as Personal Representative of the Estate of Dorothy Lorene Evans, Deceased,)
)
Plaintiff,)
)
vs.) Case No. 11-CV-802-JED-FHM
)
GENERAL ELECTRIC COMPANY and DAEWOO ELECTRONICS AMERICA, INC., and BEST BUY STORES, L.P. and BBC PROPERTY CO.)
)
Defendants.)

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE
TO EXCLUDE REFERENCE TO OTHER CLAIMS OR INCIDENTS**

The Plaintiff, John J. Evans, as Personal Representative of the Estate of Dorothy Lorene Evans, respectfully submits this Response to the Defendants Motion in Limine to Exclude Reference to Other Claims or Incidents (Doc. 135), which was filed in this case on March 20, 2014. The Plaintiff objects to that Motion in Limine. The Court should instead rule that, to the extent G.E. presents testimony that microwave ovens cannot ignite due to electrical fires or do not contain sufficient fuel to maintain a house fire, the Plaintiff should be allowed to cross-examine that witness with evidence that G.E. microwaves have caught fire many times in the past.

ARGUMENTS AND AUTHORITIES

G.E. appears to pretend that microwave ovens do not start house fires. For example, G.E.'s alleged electrical expert, Hunter Sims, has testified that although there is fuel for a fire in the control cavity of the microwave, but a lot of the fuel is self-extinguishing. (Sims Depo., Exhibit "1", p. 39). He also testified that he could not say whether a microwave like the one involved in this case would

actually catch fire and start a house fire. (*Id.*, p. 39).

The Plaintiff certainly will have direct evidence to the contrary. Dr. Marcus Durham has testified that there is more than enough fuel in the form of insulation on a wire to cause the fire in this case. (Durham Depo., Exhibit "2", p. 184). He will also testify that there was sufficient fuel in the microwave to cause the fire, including insulation on wires and plastics in the microwave. (*Id.*, pp. 193-195). Dr. Durham will also explain that he has personally reviewed several dozen instances that involved fires that were caused by electrical failures inside microwave ovens.

Microwave ovens cause thousands of house fires every year in the United States. Statistics compiled by the National Fire Protection Association (the publisher of NFPA 921) indicate that between 2007 and 2011, "U.S. fire departments responded to an average of 156,600 home fires that involved cooking equipment per year." (NFPA Home Fires Involving Cooking Equipment Fact Sheet, Exhibit "3"). About 5% of those fires – nearly 8,000 fires per year or more than 20 every day – involved a microwave oven in the ignition of the fire. (*Id.*). G.E., one of the largest sellers of microwave ovens in the world, surely knows better than to either deny or claim ignorance about whether microwave ovens can catch fire due to electrical problems.

To the extent that G.E. presents any witnesses at trial who suggest to a jury that a G.E. microwave oven may not contain sufficient fuel to start a house fire, then it becomes relevant that G.E. receives many reports that its microwaves have in fact caught fire and sometimes also started house fires in the last several years. The Plaintiff should be allowed to impeach witnesses with evidence of the many, many complaints G.E. has received regarding microwaves that have started fires.

CONCLUSION

The Plaintiff's claim is that the subject microwave had a particular and possibly unique manufacturing defect. As a result, evidence of other claims is not relevant to prove a design defect, which is not being claimed. Nevertheless, G.E. has placed questions about whether microwaves can catch fire in issue and may continue to do so at trial. To the extent G.E. asserts that it is debatable whether an electrical fault in a microwave can cause a house fire, the Plaintiff should be allowed to prove that, in fact, microwaves sold by G.E. have caught fire and caused fires in the last five years.

Respectfully submitted,

TAYLOR, RYAN, MINTON, VAN DALSEM,
& WILLIAMS, P.C.

By s/Robert Scott Williams

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CERTIFICATE OF MAILING

I, ROBERT SCOTT WILLIAMS, hereby certify that on the 23rd day of April, 2014, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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